

REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 102 and 103 are respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

Double Patenting

The examiner has provisionally rejected claims 1 and 3-37 under the judicially created doctrine of double patenting over claims 1-35 of copending Application No. 10/726,740. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The examiner asserts that the subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The present application claims a silicone, a viscosity modifying agent which may be a perfume and a deposition aid. The copending application claims a silicone, perfume, and the identical deposition aid.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application.

In response, applicants respectfully assert that if the "provisional" double patenting rejection becomes the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for Application No. 10/726,740. MPEP 804(I)(B), 8th Ed. Rev. – 3, Oct. 2005.

35 USC § 102

The examiner has rejected claims 1-58 under 35 U.S.C. 102(b) as being anticipated by Hunter, et al., US 6,939,842. The examiner asserts the following:

Hunter, et al., teach a laundry treatment composition comprising a silicone and a substituted polysaccharide (see abstract). An example of such a composition is an emulsion comprising nonionic surfactant, polydimethylsiloxane, and silicone substituted polysaccharide (col. 27, example 1). Another example is an emulsion comprising nonionic surfactant, aminosilicone, and silicone substituted polysaccharide (col. 27, example 1). Note that the silicones of the invention comprise polydialkyl siloxanes, amino siloxanes, and mixtures thereof (col. 34, claim 10). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the nonionic surfactant is completely insoluble in the silicone and therefore does not affect the viscosity. The examiner is not completely convinced of this argument as it seems that the language of "at least partially soluble" allows for even trace solubility, which the examiner believes would be satisfied by most nonionic surfactants. Even if this argument is correct, however, the reference teaches many different types of functionalized siloxanes, such as the aminosilicones discussed above, which satisfy this claim limitation. Accordingly, the rejection is maintained.

In response, applicant's have amended claim 1 to clearly distinguish it from Hunter, et al. Hunter does not disclose or suggest a composition comprising a silicone with a viscosity modifying agent selected from a volatile silicone, a perfume, an organic solvent and a low viscosity silicone in combination with a deposition aid. Therefore amended claim 1 is novel and unobvious over Hunter, et al.

The Examiner makes reference to the fact that the silicones of Hunter comprises polydialkyl siloxanes, amino silicones and mixtures thereof (col. 34, claim 10). Applicants respectfully submit that what claim 10 of Hunter states is, "wherein the silicone is selected from polydialkyl siloxanes, amine derivatives thereof and mixtures thereof". Such silicones are expressly stated to be non-volatile (see col. 4, lines 10-13 of Hunter) and as such are outside the scope of amended claim 1. Moreover, there is no disclosure or suggestion in Hunter of a silicone present in a mixture that would act as a viscosity modifier.

35 USC § 103

The examiner has further rejected claims 1 and 3-58 under 35 U.S.C. 103(a) as being unpatentable over Clark, et al., WO 00/18861. The examiner asserts the following:

Clark, et al., teach a treatment method for fabrics utilizing a deposition aid having a polysaccharide polymeric backbone and a benefit agent moiety attached thereto. The benefit agent moiety undergoes a chemical change such that the affinity of the material onto the fabric is increased (see abstract). Suitable benefit agent moieties of the invention include silicones (page 14, lines 24-25). Additional preferred components of these fabric care compositions include fabric softeners, such as silicones, as well as perfumes (page 15, lines 4-10). An example of such a composition is an aqueous laundry detergent comprising a nonionic surfactant, a deposition aid polymer, and the balance water (page 45, example 7).

The reference does not specifically teach the combination of a deposition polymer, silicone, and a viscosity modifying agent such as a perfume. As all of these components, however, are either essential or preferred in the laundry treatment compositions of the invention, it would have been obvious to one of ordinary skill in the art to combine these components with a reasonable expectation of successfully obtaining a fabric treatment composition.

Applicants have traversed this rejection on the grounds that the reference does not teach an emulsified silicone having a viscosity modifying agent dissolved or dispersed therein, and therefore does not address the problem of applicants, that is, dispersing a viscosity modifier in a silicone to form effective emulsions.

The examiner acknowledges Clark, et al., may not have been trying to solve the same problem as applicants, however, as it is obvious to form a fabric care composition containing the same components as the presently claimed invention, that is, a silicone, perfume and deposition aid, the examiner maintains that such a composition, once formed, would satisfy the claim limitations at hand. Accordingly, the rejection is maintained.

In response, applicants respectfully submit that Clark teaches a material for deposition onto a substrate, having a polysaccharide backbone and a benefit agent attached thereto by a hydrolytically stable bond. As the Examiner correctly states, the document does not specifically teach the combination of a deposition polymer, silicone and a viscosity modifying agent such as perfume. However the Examiner asserts that these components are preferred in laundry treatment compositions of the invention and it would have been obvious to one of ordinary skill in the art to combine these components with a reasonable expectation of successfully obtaining a fabric treatment composition.

Applicants respectfully submit that there is no disclosure or suggestion in Clark of making an emulsion composition, nor that the perfume can act as a viscosity modifier. Perfume is stated as an ingredient, but no mention is made of any secondary property other than scent (i.e. no disclosure that it can act as a viscosity modifier for silicones).

Applicants respectfully submit that an unexpected result of the present invention is to enable the use of silicones that are considered too viscous to form effective emulsions in laundry treatment compositions. An emulsion with specific dissolved or dispersed silicone viscosity modifiers was discovered to solve this problem. It is further respectfully submitted that

the skilled person would not be led to the instant invention as now claimed absent impermissible hindsight in view of Clark, et al.

CONCLUSION

In summary, claims 1 and 4 have been amended and claim 3 cancelled as being redundant. No new matter has been added by way of this amendment.

In light of the above amendments and remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Alan A. Bornstein", is written over a horizontal line.

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